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5 JAMES B FEINMAN,
6 Plaintiff,

7 v.
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10 VOLKSWAGEN GROUP OF AMERICA
11 INC,
12 Defendant.
13

Case No. 19-cv-03397-CRB

**ORDER GRANTING MOTION TO
DISMISS**

14 Defendant Volkswagen Group of America Inc. moves to dismiss Plaintiff James B.
15 Feinman's suit for attorneys' fees.

16 Feinman originally sued in Virginia state court in December 2018. See Complaint
17 (dkt. 1-2). Volkswagen removed the case to the Western District of Virginia, and it was
18 later transferred to this Court. See Notice of Removal (dkt. 1); Transfer Order (dkt. 13).
19 On May 6, 2019, the Court granted Volkswagen's motion to enforce the Class Settlement
20 release. See Injunction Order (MDL dkt. 6264). That release had extinguished Feinman's
21 claims for attorneys' fees. See id. As the Court explained, the settlement approval order
22 enjoined releasing parties "from commencing, filing, initiating, instituting, pursuing,
23 maintaining, enforcing, or prosecuting, either directly or indirectly, any Released Claims
24 . . . in any jurisdiction or forum, against any of the Released parties." Id. at 5. Thus,
25 "Feinman is enjoined from pursuing his [attorneys' fees] claims against VW." Id.¹

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27 ¹ The Court explained that state law may sometimes provide a lawyer with a charging lien, which
28 attaches to money awarded to the lawyer's client; that in some circumstances a lawyer can use a
charging lien to recover fees from the defendant; that here, many consumers who retained their
own lawyers left those lawyers and accepted settlements negotiated by lawyers that this Court

1 Feinman has exhausted his appeals: The Ninth Circuit affirmed the Court's decision
2 on August 17, 2020, (MDL dkt. 7663), and the Supreme Court denied Feinman's petition
3 for a writ of certiorari on March 29, 2021, (MDL dkt. 7851).

4 On April 8, 2021, Volkswagen's counsel contacted Feinman to request a stipulated
5 dismissal of this suit. See Monahan Decl. Ex. A. (dkt. 15-2). Feinman refused, arguing
6 that he does not "have to agree with the injunction while fully respecting it." Opp. (dkt.
7 17) at 2 (emphasis in original).

8 Volkswagen now moves to dismiss under Rule 41(b) of the Federal Rules of Civil
9 Procedure. See MTD (dkt. 15). Rule 41(b) states: "If the plaintiff fails to prosecute or to
10 comply with . . . a court order, a defendant may move to dismiss the action or any claim
11 against it." Fed. R. Civ. P. 41(b). This rule permits district courts to "dismiss an action for
12 failure to comply with any order of the court." Ferdik v. Bonzelet, 963 F.2d 1258, 1260
13 (9th Cir. 1991).

14 Here, the injunction bars Feinman's action for fees. And Feinman has not complied
15 with the injunction. Thus, whether by operation of the injunction itself or Rule 41(b), this
16 case is over.²

17 For the foregoing reasons, the Court grants Volkswagen's motion to dismiss with
18 prejudice.³

19 **IT IS SO ORDERED.**

20 Dated: July 16, 2021



CHARLES R. BREYER
United States District Judge

25 appointed; and that those consumers released on behalf of themselves and their attorneys any
26 claims for liens or attorneys' fees or costs other than the fees and costs that the Court awarded in
27 connection with the settlement. MDL dkt. 6264 at 1-2.

28 ² The Ninth Circuit has already rejected Feinman's argument that the Court lacks jurisdiction over
this action. See In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products
Liability Litig., 914 F.3d 623, 647 n.12 (9th Cir. 2019).

³ The Court denies Volkswagen's request for attorneys' fees and both parties' motions for
sanctions.